IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D., 1962

No. [redacted] 9

BEATRICE LYNUM,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

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Petition for Writ of Certiorari

Opinion of the Court Below

The opinion of the Supreme Court of Illinois is reported at Appendix I, *infra*.

Statement of Jurisdiction

The judgment of the Supreme Court of Illinois was entered on December 1, 1960; a timely petition for rehearing was denied on 1/18/61.

The statutory provision believed to confer upon this Court jurisdiction to review the judgment in question by Writ of Certiorari is Title 28 United States Code, Section 1257 (3).

Question Presented

Whether the use by the State's Attorney of statements illegally obtained from Petitioner by threats or promises of leniency, deprived the Petitioner of her liberty without due process of law—contrary to the Fourteenth Amendment to the Constitution of the United States.

Constitutional and Statutory Provisions Involved

Constitution of the United States Amendment XIV, Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner, Beatrice Lynum, hereinafter sometimes referred to as the defendant, was indicted by the Grand Jury of Cook County, Illinois, for the crime of unlawful sale, dispensing and possession of narcotics. She was tried by Judge Harold P. O'Connell, without a jury, in the Criminal Court of Cook County on the charge of unlawful sale, dispensing and possession of narcotics. The Court returned a verdict of guilty in manner and form as charged in the indictment; and the defendant was sentenced to ten to eleven years in the Penitentiary. From this judgment, defendant sued out a writ of error to the Supreme Court of Illinois. On December 1, 1961, the Supreme Court of Illinois affirmed the judgment and on January 18, 1961, denied a certain petition for rehearing.

One James Zeno, a witness on behalf of the State, was in custody of the police for possession and sale of narcotics on January 17, 1961 (Abst. 35), facing the possibility of imprisonment in the penitentiary, being a second offender.

Zeno was told by the arresting officers that they would go light on him if he would set somebody up for them. Zeno then telephoned the defendant herein and she told him to come over. He was in her apartment a few minutes and left with a package which he said he obtained from defendant (Abst. 30), but which she denied (Abst. 99). He went out to the hall where Police Officer Sims was waiting and handed him the package and Sims opened it. Sims then told Zeno to pretend that he had left his glasses in the apartment and to call back for them. This Zeno did. The defendant, in response to this false call, came out into the hall; Sims grabbed her by the arm, told her she was under arrest and they went back into her apartment.

The defendant was told that if she cooperated, lenieney would be recommended for her, or that it would go light

with her; and her children might not be taken away from her (Abst. 42-45, 56-59). Defendant was told that her Aid to Dependent Children money would be cut off and that her two children would be taken away from her. Officer Sims told the defendant more than once that if she cooperated, they would go light on her (Abst. 64).

It was after the conversation in which defendant was told by the police officer that she had been set up and in which cooperation and lenieney were discussed, that the defendant cooperated and made her first statement of admission, "Yes, I did sell it to him." (Abst. 44, 97)

In addition to the foregoing, the Record indicates clearly that not only was the defendant set up by one Zeno who admittedly was in custody for possession and sale of narcotics (Abst. 34) and wanted to keep from going to the penitentiary if he possibly could (Abst. 35) but nothing indicates that the agents of the State had reasonable ground to believe that the defendant was predisposed to violate the law. The Record shows that the State engineered the case and did not make the effort to verify Zeno's actions but left everything up to Zeno and the State relied solely upon Zeno's word that the defendant sold narcotics to him. There is no other proof of sale.

REASONS FOR GRANTING WRIT

It is our contention that due process of law as guaranteed by the Amendment of the Constitution of the United States, has been denied to petitioner by the State of Illinois, in that a fair and just hearing has been denied to petitioner by the fraud of the State in its knowing use of illegal and incompetent evidence, secured by officers and agents of the State in gross violation of the law.

Powell v. *Alabama*, 287 U.S. 45; 77; 53 Sup. Ct. Rep. 55.

Brown v. *Mississippi*, 297 U.S. 276.

Crawford v. *U. S.*, 219 F. 2nd 207.

Bram v. *U. S.*; 168 U.S. 532.

The illegal and incompetent evidence here complained of consisted of incriminating statements secured from the defendant by officers of the State through subjection of defendant to threats that her two minor children would be taken from her if she did not "cooperate" and the further promise of leniency if she "cooperated," said statements being fraudulently offered by the State, on petitioner's trial, as a free and voluntary confession.

That this petitioner was promised leniency, there is no doubt. There is no doubt that certain promises made to her induced the confession that she made. It is well established in our law that any promise made by an officer to accused following arrest of accused is sufficient to render confession involuntary, *Crawford* v. *U. S.*, 219 F. 2nd 207; *Bram* v. *U. S.*, 168 U.S. 532, and that a confession to one in authority must not be extorted by any direct or implied promise relating to some benefit to be received by the accused in the criminal prosecution. *State* v. *Colee*, 56A2 898; 334 U.S. 851.

In the instant case, the Supreme Court of Illinois overlooked the fact that admissions, to be competent, must be freely and voluntarily made; and that they must not be induced by another by the remotest fear of injury of the slightest hope of benefit or reward; and if admissions are so made, they are incompetent, as the court will not weigh the amount of influence produced by the illegally obtained admissions, but will hold all of it to be incompetent. See *People* v. *Jones*, 402 Ill. 231; *People* v. *Schwartz*, 3 Ill. 2d 520; *Reeves v. State*, 75 S. Ct. 214, 348 U.S. 891.

In *People* v. *Heide*, 302 Ill. 624, the Court at page 627 said that under the law a confession is inadmissible if made under any promise or hope of immunity; and further held that the effect of the promise was not measurable and therefore the whole confession was inadmissible.

It is difficult to conceive of methods more revolting to the sense of justice than those taken to procure the confession of the petitioner, and the use of the confession thus obtained as the basis for conviction and sentence was a clear denial of due process. What more coercion can there be than the threat of taking a mother's children from her. In *Brown* v. *Mississippi*, 297 U.S. 276, the Court held that the beatings suffered by the petitioners amounted to such force and violence as to coerce petitioners' confessions and that the use of their statements as confessions was denial of due process. I respectfully submit that the threats made to this mother far surpassed any physical brutality that she could possibly experience and that she was forced into confessing in order to keep her children.

What is also very important is the further fact that without these admissions, which the court overruled objections to, and which the Court considered against the defendant in determining her guilt or innocence—without

these inadmissible admissions, there would have been only the word of the discredited Zeno against the never-before-arrested Lynum. We should note well that Zeno, a second time narcotics offender, was actually pressured by the State to set somebody up. Zeno, as an agent of the State, had no alternative but to find a victim in order to save himself from the penitentiary. It must be kept in mind that the State itself, in effect, engineered this case, although it did not take care to verify Zeno's "set up." The record shows that Zeno was out of the view of the police officers for about ten minutes, that during this ten minutes when the actual sale was to have taken place, Zeno could have received narcotics from some one other than Lynum, and no one else, other than Zeno, testified that the defendant sold the narcotics to Zeno. There is absolutely no proof of sale except the word of Zeno.

CONCLUSION.

For the above and foregoing reasons, a Writ of Certiorari should issue from this Court to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

JEWEL STRADFORD ROGERS,
Chicago, Illinois,
Attorney for Petitioner.

APPENDIX A

Docket No. 35748—Agenda 19—September, 1960.
The People of the State of Illinois, Defendant in Error, v. Beatrice Lynumn, Plaintiff in Error.

Mr. JUSTICE SOLFISBURG delivered the opinion of the court:

Defendant, Beatrice Lynumn, was tried by the court without a jury in the criminal court of Cook County on the charge of the unlawful sales, dispensing and possession of narcotics. She was found guilty of the charge and sentenced to 10 to 11 years in the penitentiary. From this judgment, defendant has sued out this writ of error.

Defendant contends that the indictment should have been quashed; a new trial should have been granted; and the evidence was insufficient to establish guilt.

We turn first to the contention that the indictment was insufficient. Defendant was indicted in three successive counts, with the unlawful sale, dispensing, and possession, "otherwise than as authorized in the Uniform Narcotic Drug Act of said State of Illinois then in force and effect, a quantity (the exact quantity of which is unknown to said Grand Jurors) of a certain narcotic drug, to-wit: cannabis, sometimes called marijuana, contrary to the Statute." Defendant argues that not all forms of cannabis are narcotic drugs, and the indictment must more specifically describe the type of cannabis involved. In support of this view, defendant cites *People* v. *Sourd*, 370 Ill. 140. The *Sourd case* was decided under the particular language of a prior act, (Ill. Rev. Stat. 1935, chap. 91, par. 157.) which was later amended. (Ill. Rev. Stat. 1957, chap. 38, par. 192.28—2.17.) In *People* v. *Yeargin*, 3 Ill.2d 23, we fully considered the *Sourd case* and the subsequent statutory changes, and held

that the language, "cannabis, sometimes called marijuana," sufficiently alleges a narcotic drug as defined by statute. We regard that case as conclusive here.

We next turn to the trial itself. The manner of the arrest of defendant and the nature of the proof are not unusual in narcotic cases. On January 17, 1959, one Zeno was arrested by police officers, Sims, Bryson, and Kobar, for the sale of and possession of narcotics. While in custody he agreed to "set somebody up" for the police. After phoning the defendant Lynumn, he went to her apartment with the three officers, and he was admitted. Zeno testified that he then gave defendant $28 and she gave him a package wrapped in newspaper. After 10 to 15 minutes Zeno left and gave the package to the police who examined it, discovering a crushed green plant. He then called to defendant, and as she came out into the hallway officer Sims grabbed her and placed her under arrest. They then went into her apartment where they made a search and took the $28 from her. She then admitted that she sold the package to Zeno, after the police had promised to recommend leniency. At the suggestion of the police, she then made a call to one Weaver requesting a half pound of marijuana. In twenty minutes Weaver appeared with a package containing a green substance and he was arrested. A green substance, allegedly in the package given to Zeno by defendant, was tested chemically and microscopically and it was cannabis sativa, also known as cannabis, commonly referred to as marijuana. It was admitted in evidence over defendant's objection. The police officers also testified to certain admissions of guilt made to them by defendant on January 17, 1959.

Defendant Lynumn testified that Zeno came to her apartment to pay her $23 that he owed her, and $5 extra for keeping the money so long. She denied selling or giving

anything to Zeno. She testified that she said she sold the package to Zeno, and made the call to Weaver only after the police had arrested her, told her she would lose her children and her aid to dependent children, and promised leniency if she would cooperate.

At the beginning of the trial, the court sustained a motion to suppress the $28 in currency taken from defendant at the time of her arrest. Defendant now argues that in light of that ruling neither Zeno nor officer Sims should have been permitted to testify. We see no merit in that contention. Independently of the search and seizure of the $28 both Zeno and Sims had knowledge of the fact that Zeno was given $28 by the police when he left defendant's apartment he no longer had the money. Zeno, of course, had personal knowledge of whether or not he gave the money to defendant. After the motion to suppress, no evidence was admitted to show that the $28 was found in the possession of defendant after her arrest. The testimony of the witnesses was, therefore, of facts known to them independent of any possible illegal search and seizure of the $28. *People* v. *Albea*, 2 Ill.2d 317, relied on by defendant is inapplicable here. That case determined only that a witness discovered solely by an admittedly illegal search could not testify. In *Albea*, we reiterated what we said in *People v. Martin*, 382 Ill. 192, 200: "The principle seems clear that evidence obtained independently of the illegal search may be used against the defendants." We think that rule applicable here. Both the identity of the witnesses and the facts to which they testified were independent of the search of the premises.

Defendant further objects that the marijuana introduced as an exhibit was not sufficiently identified as being the same substance which defendant allegedly gave Zeno. We have reviewed the entire record as to testimony tracing

the green substance from Zeno to officer Sims, to the police chemist, through analysis, and back to the court room. We think the chain was fully proved, and that the marijuana was properly introduced in evidence.

A further complaint is made that the court erred in admitting testimony of alleged oral admissions of defendant without proper statutory notice to defendant. (Ill. Rev. Stat. 1959, chap. 38, par. 729.) The notice to defendant stated the alleged admissions were made on January 18, while the proof showed the statements to have been made on January 17. The record clearly shows that defendant was not surprised by the error in dates, but in fact admitted the statements with the explanation that she made them after a promise of leniency. In this state of the record, we cannot see that the error in date could be prejudicial.

A review of the record does indicate, however, that strong suggestions of leniency were made to defendant subsequent to her arrest and prior to her admissions. Even in the absence of defendant's statements, there is clear proof by Zeno and the police officers that defendant gave Zeno a package containing marijuana. Upon a review of the entire record, we are convinced that the evidence fully supports the judgment of the trial court. While the character of Zeno was questionable, he was fully corroborated by the police officers and physical facts. In the absence of a jury, the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn therefrom are for the trial judge, and his judgment will not be lightly set aside. (*People* v. *Richardson*, 17 Ill.2d 253; *People* v. *Pride*, 16 Ill. 2d 82; *People* v. *Arnold*, 2 Ill. 2d 92.) From this record we cannot see that the trial judge could have reached any conclusion but one of guilt.

Defendant also complains that certain newspaper articles published between June 18 and June 21, 1959, contained alleged criticism of the trial judge by the State's Attorney, and that these articles in some way prejudiced defendant. It is sufficient answer to say that the trial of this case commenced after the publication of the articles, and defendant made no timely application for change of venue, but was content to submit her case to the judge without a jury. Nor do we find the slightest indication of prejudice on the part of the trial judge in the record.

We have examined numerous other allegations of error and find that they are of insufficient merit to justify further discussion. Suffice it to say that, on the entire record, the defendant received a fair trial and was proved guilty beyond a reasonable doubt. The judgment of the trial court must accordingly be affirmed.

Judgment affirmed.

APPENDIX B

Docket No. 35748
The People of the State of Illinois, Defendant in Error, v. Beatrice Lynumn, Plaintiff in Error.

PETITION FOR RE-HEARING.

MAY IT PLEASE THE COURT:

In presenting this petition for re-hearing, we do so with sincerity and not as a matter of form; for we cannot understand the court's failure to pass upon so many points raised in our original brief except that the court either overlooked or misapprehended our points; or both.

The court, we believe, overlooked the history of the Narcotic Act in the various legislative enactments since 1931, which we contended on pages 47 to 50 of our brief was sufficient to overrule the case of the *People* v. *Yeargain*, 3 Ill. 2d 24, and cause the case of *People* v. *Sourd*, 370 Ill. 140 at 143 to be followed.

Second: The court completely overlooked the failure of the State to prove a material allegation in the indictment, to-wit: that the quantity of narcotics was unknown to the grand jurors. This is a question that will arise in all future prosecutions until settled by this court. The point is argued on pages 50-51 of our brief.

Third: The court overlooked, and did not discuss the point raised on page 55 of our brief, wherein we allege the commission of reversible error by the trial court in permitting the interrogation of defendant about other crimes separate from the one with which she was charged. All cases hold this to be prejudicial error.

Fourth: We certainly believe that the court both overlooked and misapprehended our point VI, found on page 66

of our brief. This court admits in its opinion that strong suggestions of leniency were made to defendant subsequent to her arrest and PRIOR to her admissions (bottom of page 3 of the opinion). The court then properly holds that the decision of a trier of fact (in this case the court) will not lightly be set aside. But, the court overlooked the fact that the trial Judge overruled all objections to the competency of the aforementioned admissions which the Supreme Court admits were made under suggestions of leniency. The trial judge considered these admissions, now admittedly made under suggestions of leniency, in determining the question of defendant's guilt. In other words, without these admissions which she was tricked into making under promises of freedom from prosecution, there would have been an entirely different case for the trier of fact to consider. This court overlooked the fact that a different conclusion could have been reached without the evidence of the admissions made under promise of freedom from prosecution. Moreover, the court overlooked the fundamental fact urged under said point VI that the public policy of the State is involved here;

that it is abhorrent to justice to trick citizens into admissions and use such admissions to convict. We feel this court overlooked the decision of *Brown* v. *Mississippi*, 297 U. S. 276 at 286, found on page 67 of our brief. Surely, this court overlooked the fact that had the prisoner been beaten into making admissions, the admissions would have been rejected as evidence; and this court then overlooked the fact that admissions obtained by promises of immunity are just as vicious and constitute a denial of due process of law.

Fifth: And in this connection, the court overlooked the fact that admissions to be competent, must be freely and voluntarily made; and that they must not be induced by

another by the remotest fear of injury or the slightest hope of benefit or reward; and if admissions are so made, they are incompetent, as the court will not weigh the amount of influence produced by the illegally obtained admissions, but will hold all of it to be incompetent. See *People* v. *Heide*, 302 Ill. 624 at 627; *People* v. *Jones*, 402 Ill. 231; and *People* v. *Schwartz*, 3 Ill. 2d 520, cited on pages 62 and 63 of our brief. What is so very important, and manifestly has been overlooked, is the further fact that without these admissions, which the court overruled objections to, and which the court considered against the defendant in determining her guilt or innocence—without these inadmissible admissions there would have been only the word of the discredited Zeno against the never-before-arrested Lynum. This court obviously overlooked, in declining to remand the cause, the fact that the defendant has not had an opportunity to have her case weighed by this trier of fact (the court), without these incompetent admissions held in the scale against her. Surely, this court overlooked the fact that Judge O'Connell believed Zeno to be corroborated by these erroneously admitted admissions and confessions, for Judge O'Connell steadfastly overruled objections to these confessions when the specific objection was made that they had been obtained under promises which rendered them incompetent (See Abst. bottom 44, top 45 where ruling on motion to strike as being induced by promises of immunity was reserved; then the top of Abst. 67 where motion to strike was renewed on the grounds that they were inadmissible as given under promises of leniency, and where the court denied the motion.

Thus Judge O'Connell considered this evidence against defendant and manifestly had to consider that Zeno had been corroborated. But, as this Supreme Court says on page 3 of its opinion, these strong suggestions of leniency

were made subsequent to her arrest and prior to her admissions. Therefore, this court must surely have overlooked the result which followed: namely, that Judge O'Connell considered Zeno to have been corroborated when in fact the supposedly corroborating evidence was incompetent evidence. Further, this honorable court overlooked the fact that the defendant is entitled to the benefit of the decision of the trier of fact without this prejudicial and harmful and inadmissible evidence. Did not this court overlook the fact that Judge O'Connell who alone heard and saw Zeno has the duty and task of passing on the credibility of Zeno without this prejudicial and seemingly corroborative evidence; and that this can only be done by remanding the cause? Zeno uncorroborated is vastly different from Zeno corroborated.

Finally, we feel this court assuredly overlooked the fact that the trial in chief began on the morning of June 18, 1959 (Abst. 28—very bottom); but the motion to suppress had already been heard and disposed of just before that, and thus there was no lawful way to secure a change of venue. The trial proper commenced on the morning of June 18, 1959, and thus while the trial was in progress—after the sustaining of the motion to suppress—and too late for a change of venue, and all unknown to defendant who was sitting in court at counsel table, the newspapers hit the street with the article assailing the trial Judge (Abst. 28, 29,—Rec. pages 180 and following; Abst. 53, Rec. page 245, showing the court recessed until 1:45 P.M. that same day Thursday, June 18, 1959). Thus was overlooked the fact that the motion to suppress had been sustained; the trial commenced in the forenoon, and had after many pages of testimony been recessed until 1:45 that same

day—all before the defendant knew what was in the papers. Therefore, no proper motion for change of venue could have been asked for, and prejudice is axiomatic where a trier of fact is assailed by name in the middle of a trial.

Wherefore, defendant prays a rehearing.

Respectfully submitted,

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and E. F. JOHNSON
Attorneys for Defendant.

CLAUDE W. B. HOLMAN,
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Of Counsel

APPENDIX C

UNITED STATES OF AMERICA

State of Illinois,
Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January in the year of our Lord; one thousand nine hundred and sixty-one, within and for the State of Illinois.

Present: Walter V. Schaefer, Chief Justice

Justice Joseph E. Daily	Justice George W. Bristow
Justice Harry B. Hershey	Justice Ray L. Klingbiel
Justice Byron O. House	Justice Roy J. Solfisburg, Jr.

William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searey, Clerk.

Be It Remembered, that, to-wit: on the 18th day of January, A.D. 1961, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Docket No. 35748—Error to Criminal Court, Cook County
People State of Illinois, Defendant in Error, v.
Beatrice Lynumn, Plaintiff in Error.

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

APPENDIX D

Portions of Record Relied Upon

JAMES ZENO, called as a witness on behalf of the State was examined and testified as follows:

Direct Examination by Mr. Conley.

My name is James Zeno.

Mr. Holman: I have an objection to make after the witness has given his name, and my objection is that any evidence coming from this witness is improper after the motion to suppress. The Albea case squarely substantiates it. The entry by stealth vitiates the proceedings. In the Albea case, they said that whatever the informer was going to testify to is likewise inadmissible because what the informer found out as a result of this illegal arrest of this person Albea is not admissible in evidence.

The Court: Your motion will be denied. Proceed, please.

Witness resuming: I live at 6529 South Kenwood.

186 About January 17, 1959, I had a conversation with police officers from Woodlawn Station at about 4:45 P.M. I called Beatrice Lynumn's home.

187 I know Beatrice Lynumn prior to January 17th. I talked to her approximately 5 to 6 times on the telephone. I knew her voice. It was approximately 5:00 o'clock when I talked to her from the Woodlawn District.

Q. What did you say to her and what did she say to you?

Mr. Holman: Same objection, lack of a proper foundation.

The Court: Objection overruled.

188 I said I was coming over and would like to purchase a can and she told me to come over but not to come in because there was someone there. I said I had part of the money I owed. I would pay her part of the money I owed her. She said come on over. Then I went over with Officers Bryson and Sims and went upstairs. I rang the bell and went upstairs and she let me in and told me to come on in, that it was all right. I said hello, how had she been doing? I had $28.00.

189 Mr. Holman: I object to that. The money is suppressed, if the Court please, and you have no right to offer that suppressed evidence. That has been suppressed and is not admissible.

The Court: Overruled.

Witness: I gave her $28.00. I owed her $10.00 and gave her $18.00 in addition. She told me to sit in the kitchen and I sat in the kitchen for a few minutes and she brought back this package.

190 It was in newspaper and I took it. She didn't say anything. She just handed it to me. I stood up and I said, I think I had better be leaving because you have company. I passed the door and the fellow was sitting in the living-room and I nodded. She said something, I don't remember what.

Mr. Holman: I move to strike out "She brought me a package" I renew my objection and move to strike it out because it is suppressed. It is evidence that is suppressed.

The Court: The motion will be denied.

Witness: Then I left the apartment and went outside to the corridor and she followed me out there. When she came back to her apartment, Officer Sims came up to me and took the package and opened it and looked in it.

191 There is one door, outside door that leads from the stairwell; then there is a hallway about 7 to 8 yards long before you enter into her apartment. When I left she went out with me to the outside door. She opened the door. The door was still open when she went back. I stayed inside this hallway. Officer Sims took the package and opened it up.

192 I stood there and called and told her I left my glasses there.

193 She came out of the inner door. She came all the way out back to me and then Officer Sims grabbed her by the arm and told her she was under arrest and we went back into the apartment. There was no conversation between me and the defendant when she came out in response to my call; no conversation. This happened in Chicago, Illinois.

Mr. Holman: Motion to strike his testimony on the grounds that it is within the prohibition as laid down in the Albea case.

194 The Court: Motion denied.

Cross Examination by Mr. Holman.

I did not say that Miss Lynumn stepped out of her door and walked towards me and Officer Sims grabbed her by the arm, that is wrong. She had gotten up to me before Officer Sims grabbed her by the arm. That is approximately—

195 She walked about 14 feet out into the hallway and then Officer Sims grabbed her by the arm. He said you are under arrest.

196 He said you are under arrest after she had reached me, then he said that. I don't remember whether he grabbed her by the arm first or said you're under arrest first. I don't remember even if they happened at the same time. He arrested her by placing his arm

at or about the position of her elbow. I wasn't noticing or paying any attention and cannot say whether it was with force or not.

197 Whichever one came first, it was still a matter of short seconds between the grabbing of the arm and the statement you are under arrest; it was at about the same time. And both happened out there in the hall after she had come on out. I went with Sims and Miss Lynumn back into the apartment after Sims had grabbed her arm and placed her under arrest in the hallway. Over the telephone I did tell her that I was going to pay her some money and I did owe her some money. I don't remember how long I was in the hallway. It was about 4 or 5 minutes, something like that. It wasn't over ten minutes.

198 I was not out of the sight of the Officers more than 10 minutes. I did see Mr. Harrington in the apartment but I don't remember if I spoke to him. I don't remember if I was introduced to him. I am a table waiter. I am now waiting to be sentenced to the penitentiary.

199 Besides waiting to be sentenced to the penitentiary, I don't remember when I did other waiting. I wasn't on any legitimate job in January of 1959. The last time I drew a pay check from any employer wasn't as a waiter. I don't remember the exact date because it has been so long now.

200 I was locked up in December. I was in jail in December. I was in jail from December '56 to December, 1957. I was in jail this period of time for possession of narcotics.

201 I served 2 years in the Bridewell from '56 to '58, '56 and '57, and got out in '57. I didn't go to work. When I had the conversation at the Woodlawn police station I had been out of the Bridewell about 13 months. In

that 13 month period, I did not work for anybody, I was on the welfare.

202 I was on relief, welfare. I got $30.00 a month and lived on $30.00 a month. When I wasn't on relief I was with friends. The friend I stayed with was a Mr. Dade.

203 He lived at 5201 Woodlawn. I lived with Mr. Dade 7 months. He fed me and let me have room and board there. I did no work for him at all. He is a Cook. I was already in custody on January 17th when I went to the Lynumn apartment. I had been in custody 4 or 5 hours for possession and sale of narcotics. I had possessed and sold narcotics to somebody when they arrested me. It was not a bum rap or else I wouldn't be here.

204 Before I went to the Lynumn apartment I was arrested for possession and sale and that was before I had talked to Miss Lynumn. I had possessed some narcotics from some one else. I was in my house when the police arrested me. They found no narcotics on me when they arrested me. There was someone there at my house who was sent to buy from me and I sold the narcotics to that somebody. When I sold the narcotics to that person the police came in and arrested me.

205 And charged me with possession and sale of narcotics. Sims and Bryson were the arresting officers. They told me that if I would set somebody up for them, they would go light on me. It was three or four or five hours from the time I was arrested and carried to the Woodlawn station before I made telephone contact with Miss Lynumn. The police officers told me that if I would set somebody up for them, they would

go light on me and I was hoping that they would go light on me.

206 I knew I would have to be classed as a second offender and would have to serve time in the penitentiary. I knew I was penitentiary bound. I wanted to keep from going to the penitentiary if I possibly could. I still want to keep from going to the penitentiary if I possibly can. I wouldn't have to lie to keep from going to the penitentiary. I won't tell any kind of lie to keep from going, because I don't have to lie. I wouldn't lie to help myself.

207 I have conscientious scruples against telling a lie.

Q. You have no conscientious scruples against peddling narcotics, though, have you?

Objection. Sustained.

I did peddle narcotics though and it didn't trouble my conscious. I am the same James Zeno that is under indictment in cause number 59-211 pending in this same Court.

208 I am that same Zeno and I pleaded guilty on March 11, 1959. I told the Judge that I was guilty of peddling narcotics. I told him I was guilty of selling narcotics. I want to help myself. I am trying to help myself when I entered that plea.

• • •

The Court: Now you said that the officers told you that if you set somebody up for them, they would go easy on you?

The Witness: No, your Honor. They had said they would put in a recommendation for leniency.

The Court: Who said that?

The Witness: Officer Sims.

The Court: Officer Sims?

The Witness: Yes, your Honor.

The Court: That is all I have in mind. Thank you.

You can call your next witness if there are no further questions of this witness.

218 GEORGE T. SIMS, JR. called as a witness for the State was examined and testified as follows:

My name is George T. Sims, Jr., Police Officer, City of Chicago, and so employed January 17, 1959.

219 About 4:45 P.M. that day I conversed with Zeno at the Woodlawn station. Zeno, Bryson, and Kobar were present. After the conversation we got in an automobile, the four of us and drove to 6518 University. And I gave Zeno $28.00.

Objection by Mr. Holman; overruled by Court.

By agreement, one standing objection in the record as to the money was deemed sufficient.

Witness: I searched Zeno at the time of his arrest and after he was taken to the Woodlawn Station.

220 At approximately 3:00 P.M. or 3:30 P.M. I made a detailed search of his person. The first search took place at his home. He was stripped to the nude and everything was taken from him. He was given his clothing to put back on. He had nothing left in his possession. After I took him to the police station, we had a further conversation: I turned back over to him books that he asked for with telephone numbers in it; then I took the book from him again and turned over to him ten cents and he made a call.

221 He had nothing on him in the station when he was searched other than the clothes he was wearing. We drove from the station to 6518 South University and we parked on the east side of the street. I turned over to Zeno $28.00 in United States currency. Zeno, myself and Bryson got out of the car with Kobar. Kobar went to the rear of the building. Bryson and

I entered the vestibule with Zeno. He rang the third floor apartment bell.

222 The door was buzzed and Zeno went into the inner door which leads into the hallway leading upstairs. I went into the door with Zeno and Bryson. After we got inside, Zeno trotted up the stairs; I tip-toed up until I got to the second floor. When I arrived at the second floor, Zeno had arrived at the third floor. He stood there a moment and the third floor door opened. As the door opened, I tip-toed and peered over to the third floor and saw Lynumn having a conversation with Zeno. The two of them disappeared into the doorway and the door was closed. I am indicating the defendant in this cause, Beatrice Lynumn, as the woman that had admitted Zeno into the apartment. After the door was closed, I waved to Bryson and the two of us walked upstairs and stood next to the door that we had seen close with Zeno and Lynumn entering.

223 As we stood at the door, I put my ear to the door, but heard nothing. About five minutes later I heard a door on the inside of the apartment open and footsteps on the inside and shortly after that Zeno emerged from the door that he had previously gone into. He had in his hand the newspaper wrapped package which he turned over to me. It was a small package, about four or six inches long and three or four inches square and it had a little depth to it about an inch and a half. I opened the package; I noticed crushed green plant on the inside; I poured some of it into my hand and after examining it I talked to Zeno.

224 Objection by Mr. Holman that "examining" is a conclusion, but "No objection to 'pouring it into his hand' as that is contrary to what he testified to on the motion to suppress." No ruling by court.

Witness: I looked at the plant and I felt the plant and I had a conversation with Zeno after which Zeno called Beatrice and said he had left his glasses.

225 Objection by Mr. Holman; overruled by court.

Witness: He called Beatrice and said he had left his glasses in the apartment; she opened the door and as she came out into the hall, I was standing in the common hall, in the vestibule part with the door partly closed. As she walked down the hallway toward Zeno, I opened the door and stepped into the hallway. I told her she was under arrest and I grabbed her by her hands, both hands. At this point, I told her that she had been set up, that she had just made a sale and I showed her the package. She said, "I have company on the inside. I don't want"—

226 I told her she had been set up by Zeno. I showed her the package, she said I have company in the house; I don't want to let him know what's happening. She said, when we go in, don't go in the living-room. We can go in the bedroom and finish the conversation. We walked in the door and went into the apartment and the first door we came to was the bedroom; so she and I went into the bedroom and Bryson went in there with us. I think we let Kobar in first and after he came into the apartment, she and Officer Bryson and I went into the bedroom.

227 I told her then that Zeno had been trapped and we asked him to cooperate; that he had made a phone call to her and subsequently had purchased the evidence from her. I told her then if she wished to cooperate, we would be willing to recommend to the State leniency in her case. At that time, she said, "Yes, I did sell it to him." And she said "I'm in bad shape. I don't have enough money hardly to pay my rent." She said "I would be willing to cooperate" and she did. She made a telephone call.

Mr. Holman: Now, may I be heard on that portion of it, Judge?

The Court: Surely.

228-229 Objection by Mr. Holman and motion to strike, as being induced by promises of immunity.

230 The Court: I will reserve ruling on your motion to strike it until the close of the State's case. Proceed, please.

Cross Examination of Officer Sims.

I already said I took Miss Lynumn in the apartment by her two hands.

252 I had complete physical possession of her two hands. I had turned her hands loose when we went into the apartment. I went in ahead of her. The door was still open. The apartment door was still ajar and I walked into the apartment and she followed me in. We were together but I was beside her. I believe Bryson and Zeno were behind her. She was between two police officers. We proceeded in that fashion to enter her apartment. We hadn't been in there long before we told her she had been set up and that if she would cooperate we would go light on her. It must have been about 10 minutes.

253 The rest of the time during that 10 minutes I think I had opened the back door for Kobar and had questioned the gentleman that was in the apartment. Then I came back in the bedroom where she was talking to Bryson. I exhibited no gun at any time, nor pulled one. Officer Kobar talked to the defendant while I was in the apartment. I don't believe Kobar talked to her after the call was made and we were waiting; he talked to her then. I don't know what Kobar said

to her. While I was talking to her in the bedroom, she told me that she had children and she had taken the children over to her mother-in-law, to keep her children.

254 Q. Did you or anybody in your presence indicate or suggest or say to her that her children would be taken away from her if she didn't do what you asked her to do?

Witness: I believe there was some mention of her children being taken away from her if she was arrested.

The Court: By whom? Who made mention of it?

The Witness: I believe Officer Bryson made that statement and I think I made the statement at some time during the course of our discussion that her children could be taken from her. We did not say if she cooperated they wouldn't be taken. I don't know whether Kobar said that to her or not. I don't recall if Kobar said that to her or not.

255 I don't remember all of the conversation Kobar had with her. I am confused whether I let Kobar in or not. I don't recall which one of us let him in but he was in the apartment very shortly after we went in. I am not really confused. I just don't recall whether he made the comment to her. There was some mention—I don't know whether I let him in or whether Bryson let him in but he did come in the apartment. I don't remember that. I believe I am correct in saying that Bryson and I were the only ones prior to her calling Weaver that talked to her because we were in the bedroom with her and Kobar wasn't in there with her.

256 Bryson talked to her about her children and I did too. We didn't tell her in that manner that if she didn't cooperate she would lose her children. We did

mention—I think the way it came up, we noticed the clothing in the bedroom. She had been cleaning up around the house.

257 I asked her who the clothing belonged to. She said they were her childrens. I asked how many she had and she said 2. I asked her where they were or who took care of them. She said the children were over at the mother's or mother-in-law. I asked her how did she take care of herself and she said she was on ADC. I told her that it we took her into the station and charged her with the offense, that the ADC would probably be cut off and also that she would probably lose custody of her children. That was not before I said if she cooperated, it would go light on her. It was during the same conversation. It was all during the same conversation because I never left the room until Bryson was talking to her and then she made the call and then I left the room.

258 I believe it was all before she made the telephone call. The first statement she made to me after I told her that Zeno had set her up, she said I know what's happening, but I don't want my friend to know that I am involved in narcotics. So, when you go into the apartment, don't mention anything about dope in his presence. That isn't all that was said but that was the first statement and that was after I had arrested her and then I took her back into the apartment.

259 I took her to a different from where the occupant was. She asked me what would this cooperation mean to her, and what would happen to her if she cooperated. I told her I wasn't in a position to tell her definitely what could happen but I would make a recommendation to the State's Attorney that if she cooperated, she should be entitled to leniency. And

after that, she cooperated. I don't think she told me anything about her participation in the Zeno affair. She and Zeno had a conversation in my presence.

260 I don't know if she talked to Bryson after that. I remember when I placed her under arrest, I told her she had been set up and she said she understood.

261 She stated that she knew what had happened because Zeno was present. She told me she would wish that I wouldn't mention anything in the presenc of this person in the apartment. I don't recall the next date I saw her after the 17th. I don't think I saw her the next day at all, Nor talked with her. I don't know whether Bryson or Kobar did but I don't think I did. They did not talk to her in my presence.

262 She did not make any oral confessions in my presence on the 18th. I didn't see her on the 18th. As a matter of fact; I didn't see her at all on the 18th that I recall. She didn't make any statement in my presence on the 18th that I remember.

Objection by Mr. Holman that no proper notice was furnished about alleged oral confessions.

The Court: Is there any question about that, Mr. Conley?

Mr. Conley: No, Judge, we will stipulate that the

263 list of witnesses we had given to Mr. Holman or counsel at that time is listed as the 18th of January.

Mr. Holman: And that no statement was ever furnished to this defendant at arraignment or any other time that she would be called upon to meet any alleged confessions made on the 17th.

The Court: I think that is what counsel means.

Mr. Conley: We will agree.

The Court: Yes.

Mr. Conley: The statement says as to the 18th.

Witness: I didn't give the package that I got from Zeno to a messenger, I gave it to Officer Kobar. I don't

know what he did with it. It was in the envelope when I gave it to him. He put it in his pocket and that is the last time I saw it. The last time I saw it, it was in his pocket in his possession.

264 I had no conversation with the defendant on the 18th. At one time in my presence Mr. Zeno did not have on any shoes. That is when we first broke into his apartment; he was partly clothed, not fully dressed. We were in his apartment long enough to make a search, a half hour, forty-five minutes. Then he was taken to the station. He must have been in the station in custody about an hour and a half or two hours prior to calling Miss Lynumn.

265 With respect to the time I took him into the station and the time I took him over to Lynumn's, I searched him just before he made the call. He was in a little room with me and Bryson and Kobar. We went over to Lynumn's apartment in my automobile. The only time he was out of my sight was five or six or seven minutes that he was inside the apartment on the third floor at 6518 University. In that five or seven minutes, I don't know actually who he was talking to of my own knowledge. When I got into the apartment, there were two people in the apartment. Or rather there was only one in the apartment; we went in with the other. That made two people in the apartment.

266 There was 6 of us when Kobar, myself, Bryson, and Lynumn were there. There was one other person in the apartment when I went in. Kobar was at the back door. I don't know anything about the door that goes down into the basement from the 3rd. floor. I didn't know that day there was such a door and still don't know it. I don't know of my own knowledge whether Zeno used that door or anything about that door.

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377 BEATRICE LYNUMN, defendant, called as a witness in her own behalf was examined and testified as follows:

Direct Examination by Mr. Holman.

My name is Beatrice Lynumn. I live at 5323 South Michigan. In January 1959 I lived at 6518 University. It is a six flat building facing east and I have the third floor rear apartment. There are 3 floors on each side
378 of the building. Two apartments to each floor. On the top floor on the 18 side I had the rear apartment. On January 17th Zeno called me. He owed me money, $23.00. I had loaned him this money about three months previously. He said he was being evicted and had money en route from his sister and if I could lend him the money, he could pay the rent; and I haven't seen him since. That was three months previously. On this day he told me on the phone he was sorry he had not been around to pay the money but he had been in pretty bad shape. But now he had come into some money and would come and pay me.

379 He came. As I went down the hallway, the hallway opened up into the hallway. It faces me when I opened the door. I opened it back ward me. It comes clear on back and I can observe the hall. Zeno was in view when I opened the door to admit him. No one else was in view. I was standing down the hall far enough to be out of view of anyone standing on the landing. I came back into my apartment with Zeno and took him into the living room.

380 I introduced him to Mr. Harrington who was sitting on the couch. We sat down, we had conversation for 15 or 20 minutes. Then Zeno said "I am going to give you the money I owe you, because I got to go." That was in the living room where Harrington was. He gave me the money and I let him out. Later, I heard his voice call from outside the door saying he had

left his scarf. I always thought he said he left his scarf; that is what I understood him to say.

381 He had not left any scarf nor any eye-glasses; when he called for whatever it was, scarf or eyeglasses, I opened my apartment door to tell him he hadn't left anything there. The first thing I saw when I opened up the door was a strange man standing in the door. I know now that man to be Mr. Sims. When I opened the door to tell Zeno he didn't leave his scarf and saw this strange man standing there, I made an effort to close the door. He forced the door opened, put his foot in there and took me by the hand and led into into the living room.

382 In the living room, Mr. Harrington attempted to rise when he saw this man leading me and forcing me like this; and Sims said "police officer", and took me into the bedroom. When we got into the bedroom he said he had gotten a package from Zeno. That I had been set up; that Zeno said I have sold him narcotics and that I had better tell who my source of supply was.

I told him I hadn't sold Zeno; I didn't know anything about narcotics and I had no source of supply. He kept insisting I had a source of supply and had been dealing in narcotics. I kept telling him I did not and that I knew nothing about it. Then he started telling me I could get 10 years and the children could be taken away, and after I got out they would be taken away and strangers would have them, and if I could cooperate he would see they weren't; and he would recommend leniency and I had better do what they told me if I wanted to see my kids again. The two children

383 are three and four years old. Their father is dead; they live with me. I love my children very much. I have never been arrested for anything in my whole life before. I did not know how much power a police

man had in a recommendation to the State's Attorney or to the Court. I did not know that a Court and a State's Attorney are not bound by a police officer's recommendations. I did not know anything about it. All the officers talked to me about my children and the time I could get for not cooperating. All three officers did. After that conversation I believed that if I cooperated with them and answered the questions the way they wanted me to answer, I believed that I would not be prosecuted. They had said I had better say what they wanted me to, or I would lose the kids. I said I would say anything they wanted me to say. I asked what I was to say. I was told to say "You must admit you gave Zeno the package" so I said, "Yes, I gave it to him".

385 They asked me to make a telephone call. They said, after I had admitted I had given Zeno the package, that I would have to call my source of supply. I never would have made that admission except for the promise Sergeant Sims made to me. When they asked me to call up somebody, I called Mr. Weaver who I knew socially. During this particular time there had been a big scandal about "Sin corner". Everybody was discussing sin corner and dope. I had heard Weaver's name. I knew Weaver but I didn't know the rest. When they were pressing me about the children, that I had better do what they said, I called him. I said hello, how are you. The weather had been bad,

386 how are you. Very well. General conversation. I did not ask him to bring anything. I didn't expect him to bring anything. I didn't know anything about him bringing anything. When I hung up the telephone from the conversation with Weaver, Bryson said "The son of a bitch isn't coming, you tipped him off". All

I have said is how is the weather and so forth. General conversation. On that day I did not give to Zeno,
387 nor did Mr. Zeno ask me in the telephone conversation in which he said he was going to pay me the money he owed me, he did not say anything about having a can ready for him or anything like that.

He said here is the money I owe you. He owed me $23.00. When he gave me the money, he gave me $28.00. I asked him what the $5.00 was for and he said it was because I had it so long. I did not say to Mr. Zeno let's go into the kitchen. Nothing like that. I did not have any transaction with him in the kitchen nothing even like that. I did have a conversation with Zeno as Zeno and I went in the patrol wagon to the station. The first thing I asked him when I got in the patrol wagon was "why did you tell a lie on me?" He said he had to set up somebody. I asked him why me. He said because he had been in trouble twice before.

388 His sister had gotten him out of trouble both times. She told him she wasn't going to get him out of trouble again. When the officers wanted him, he knew he owed me money and that he could get into my apartment so he set me up. What he testified to in here is untrue. I did tell him that it was a dirty trick. I did not tell him I did not blame him neither in the apartment nor in the patrol wagon. I did not have any conversation with Officer Sims in the hall. We had no conversation whatsoever in the hallway and I did not tell him I knew I was being set up, I knew nothing like that.

389 Defendant's Exhibits 2 to 11, inclusive, marked for identification by the reporter.

Witness Resuming: Zeno in the conversation, said nothing about coming over to buy a can of anything.

I did not tell him that I wanted him to sit in the kitchen because I had company; nothing like that. I did not hand him a package in newspaper, 1, 1-A, nor 1-B; I didn't hand him anything. The only reason I had for admitting it to the police was the hope of saving myself from going to jail and being taken away from my children. The statement I made to the police after
390 they promised that they would intercede for me, the statements admitting the crime, were false.